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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1972.

## No. 72-5397

DEWAYNE LINWOOD, A MINOR, BY ELEASE LINWOOD, HIS MOTHER, AND NEXT FRIEND, ON BEHALF OF HIMSELF AND ALL OTHER PERSONS SIMILARLY SITUATED,

*Petitioner,*

*vs.*

THE BOARD OF EDUCATION OF THE CITY OF PEORIA, SCHOOL DISTRICT NO. 150, PEORIA, ILLINOIS,

*Respondent.*

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

## BRIEF FOR RESPONDENT IN OPPOSITION.

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PETITION NOT PRINTED

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THE BOARD OF EDUCATION OF THE CITY OF PEORIA, SCHOOL DISTRICT NO. 150, PEORIA, ILLINOIS,

*Respondent.*

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

## BRIEF FOR RESPONDENT IN OPPOSITION.

### CITATIONS TO OPINIONS BELOW.

The opinion of the United States District Court, Southern District of Illinois, Northern Division, entered June 6, 1971, is unreported at this time. It is printed in Appendix A hereto, *infra*, p. A1. The opinion of the United States Court of Appeals for the Seventh Circuit is unreported at this time. It is printed in Appendix B hereto, *infra*, p. A8.

## JURISDICTION.

The Respondent (hereinafter referred to as the School Board) accepts the Petitioner's (hereinafter referred to as the Student) statement of Jurisdiction.

## STATUTES AND REGULATIONS INVOLVED.

The case involves:

1. Illinois Revised Statutes (1969), Chapter 122, Section 10-22.6 set forth in Appendix C p. A19.
2. Board of Education, School District 150, Peoria, Illinois. Board Policy 5114 set forth in Appendix D p. A22.

## QUESTIONS PRESENTED FOR REVIEW.

The School Board accepts the Student's statement of questions presented for review.

## STATEMENT OF THE CASE.

The School Board accepts the Student's Statement of the case.

## REASONS FOR DENYING WRIT.

### 1. No Question of National Importance Is Presented by This Case.

Certiorari should not be granted in this case. Despite student's extravagant rhetoric, this is a straightforward case of one violent disruptive student who prevented earnest, eager students from receiving that which they diligently sought—education. He, after violently denying education to other students, cries when punished for his disruptions.

Far from a national issue, this case involves one student, a state statute, and a School Board whose great care in protecting student rights is documented explicitly in this case.

The very simple facts are that the Student was found guilty of violent disruptive actions by the School Board, after a full hearing, transcribed by a court reporter, conducted by a member of the local bar association as hearing officer, with:

1. Notice of the charges in writing, sufficiently prior to the hearing.
2. The right to present evidence at the hearing (which the Student did).
3. The right to confront and cross-examine the School Board's witness (which the Student did).
4. The right to have counsel (which the Student had).

This hearing was held and governed by prior published rules of the School Board. (Appendix D p. A22.) The hearing and procedures were approved after review by both the United States District Court for the Southern District of Illinois and the United States Court of Appeals Seventh Circuit. (Appendix A and B pp. A1, A8.)

The sincerity, however, of the student in this protracted litigation is subject to very real doubt. It should be carefully noted that student, despite his reprehensible actions, was entitled by the School Board decision of expulsion on October 12, 1970 to return to school at the beginning of the next semester, just three months after entry of the expulsion order by the School Board. The beginning of the next semester was on January 25, 1971, three days after the appearance date of the summons served on the School Board and four days after the case was removed to the United States District Court, on January 21, 1971; almost

five months before the District Court's decision on June 4, 1971, over one year and five months before the decision of the Seventh Circuit Court of Appeals. The Student had been entitled to return almost from the beginning of this litigation.

It should be further realized that prior to bringing this action the statute in question had been approved as to Constitutionality by a three judge Federal panel, *Whitfield* v. *J. R. Simpson*, 312 F. Supp. 889 (1970). In that decision the majority held the statute constitutional even though the Board of Education in question had no rules requiring a hearing or providing procedural due process. The dissenting opinion of Judge Cummings of the Seventh Circuit held that the statute in itself was constitutional but that specific rules setting forth prohibited offenses and providing adequate procedural due process were required. In our case the School Board comes well within both the majority and dissenting opinions all of which was well known to student's counsel when the instant action was brought.

The student's attempt to speculate as to other school districts' possible lack of hearing procedures (Student's Petition, Section VII, Para. A p. 10) as a charge against this district cannot be accepted. This school district has a full hearing procedure which incorporates every protection of procedural due process established by this court, *Goldberg* v. *Kelly*, 397 U. S. 254, 90 S. Ct. 1011 (1970) and as particularly applied to the Illinois Statute by *Whitfield*. If there is a national problem, it is the need of a method of curtailing the disruptive effect of a small group of students who want no education and systematically try to eliminate any possibility of the majority of the student body getting the education which they earnestly desire.

Students, like citizens, generally have the constitutionally protected right to "life, liberty and the pursuit of happiness", which we feel includes education; but, like all citi-

zens, those rights may be abrogated by proscribed acts as defined by our legislatures and in conformance with due process.

We do not here argue the wisdom or even necessity of education. Such is an accepted postulate. We only argue that those who by their acts deny that education to others, must be thwarted in those purposes, but hopefully, stern measures for a short period as here meted out may help assure education to the majority and redirect the culprit in the right direction so that he too can reap the benefits of education.

## 2. Students Have a Right to an Education but by Proper Procedures It May Be Taken Away.

The Student in his Petition on page 15 states ". . . students in elementary and secondary public schools . . . are guaranteed the absolute and inalienable right to an education . . . which cannot be taken away by means of suspension or expulsion." The Student cites no authorities for this revolutionary principle of educational law nor can any legal principle or case law be found to support this theory.

We do not question that education is a right, that it is of great value to the individual and society; that one goal is to educate all to the limits of their capacities and that the opportunity must be equal. However, in light of the great debate and divergence of opinion as to whether or not the ultimate right, life, may be taken away, *Furman* v. *Georgia*, ..... U. S. ....., 92 S. Ct. 2726 (1972) it seems unthinkable that this right, though admittedly of great importance, the right to an education, cannot be taken away by due process of law. In the *Goldberg* case, speaking of welfare rights which are the means for some to live, this Court found such rights could be taken away if procedural and substantive due process were afforded.

Suspension or expulsion from school are the ultimate disciplinary measures available to the school. This School Board is charged with maintaining discipline in its schools, Illinois Revised Statutes, Chapter 122, Section 24-24, and the courts have on numerous occasions acknowledged this responsibility. *Tinker* v. *Des Moines Independent Com. Sch. Dist.*, 393 U. S. 503, 89 S. Ct. 733 (1963); *Richards* v. *Thurston*, 424 F. 2d 1281 (1970); *Soglin* v. *Kauffman*, 418 F. 2d 163 (1969).

Any distinction between college students and secondary or primary students is only a matter of degree. The standards remain the same.

The removal from school of the chronic disciplinary problem, as a last resort, cannot be rationally called an intentional abdication of Constitutional, statutory and moral obligations. It is a goal of the School Board to try and solve disciplinary problems before they reach the expulsion stage and not turn their back on the problems by casually expelling a student.[1]

> "*Suspension with recommendation for expulsion.* This measure would be used in dealing with severe and repetitious acts that are in the judgment of school authorities so extreme that the continued presence of the student would be disruptive or dangerous. In dealing with problems for which suspension is disciplinary action indicated the school administration may at any time take a *lesser summary action such as reprimand, detention, or restricted study, based on the severity of frequency of the problem.* A student who infrequently proves disruptive in the classroom may receive a lesser punishment than the student who has been referred frequently for the same offense.

1. It must be noted here that of the 119 students expelled by the School Board in 1971-72, as stated in Student's Petition, 60 of the students were placed on probation and remained in school. There were 25,300 students enrolled in the schools of this district in the 1971-72 school year.

In this way it is possible to allow for administrative discretion without altering the basic principle of uniform and impartial disciplinary action." (Appendix F. p. A34 Para. 2.D.)

The Student speaks of the Ghetto child for whom school is irrelevant and does not wish to attend. This certainly is a growing and difficult problem of modern education but surely other methods than locking these students in the Schools are needed to change their attitudes towards education.

### 3. There Was a Proper Delegation of Authority to Make Rules From the State Legislature to the School Board and the Rules Adopted by the School Board Are Not Vague or Overbroad.

The School Board's position is that in compliance with the Illinois Constitutional mandate "to operate a free and efficient school system" the Illinois legislature has passed a constitutional statute concerning suspensions and expulsions. *Illinois Revised Statutes,* Chapter 122, Section 10-22.6 (Appendix C p. A19); also a statute directing school boards, "To adopt and enforce all necessary rules for the management and government of the public schools of their district." *Illinois Revised Statutes,* Chapter 122, Section 10-20.5. The School Board has officially adopted certain rules and definitions covering suspensions and expulsions to implement this statute, which meet all Constitutional requirements. (Appendix D. p. A22.)

It should be remembered that the Section of the Illinois Statute in question, Section 10-22.6, is not directly applied to the student as a criminal statute is, but is applied through the rules and procedures adopted by the School Board.

Certainly the enabling statute must be constitutionally sound. This court said in *Kent* v. *Dulles,* 357 U. S. 116,

78 S. Ct. 1113 (1958), "if that power is delegated, the standards must be adequate to pass scrutiny by the accepted tests (quoting other cases)."

The case of *Coates* v. *City of Cincinnati*, 402 U. S. 611, 91 S. Ct. 1686 (1971) as cited in the Student's Petition must be commented upon, as a careful reading indicates a vastly different meaning.

*Coates* deals with a city ordinance, not a statute as stated by the Student. An ordinance is passed by a city pursuant to its grant of authority from its State legislature, to adopt ordinances. The Court was looking at the ordinance not the enabling legislation as the Student indicates. If this Court looks at the ordinance, i.e., School Board's Rules and Procedures (Appendix D. p. A22) they will not be found lacking for vagueness and overbreath.

The Student cites *Soglin* v. *Kauffman*, 418 F. 2d 163 (1969) as stating the accepted test for considering delegation. There the university stated that the misconduct standard represented the inherit power to discipline students and its power could be exercised without the adoption of specific rules. The Court stated, at p. 168 "We hold only that expulsion and prolonged suspension may not be imposed on students by a university simply on the basis of allegations of 'misconduct' without reference to any preexisting rule which supplies an adequate guide." This is not the situation as presented by this Petition as there were preexisting rules and definitions. (Appendix D and F pp. A22, A32.)

**4. Suspension for Seven Days Without Hearing Is Not Violative of Student's Constitutional Rights.**

The Student devotes a great deal of discussion and argument as to whether a suspension of seven days without a hearing is violative of a student's constitutional rights.

Care must be taken in these cases to distinguish whether or not the parties or the courts are discussing a short temporary suspension from school or a long term suspension in the nature of an expulsion. Student's Petition indicates there are cases on both sides as to the length of the suspension before a hearing is required.

It is submitted that this argument now has little bearing or merit as the Illinois Statute (Section 10-22.6 (b)) was amended effective September 8, 1971 to provide for hearings on suspensions:[2]

> (b) ". . . to suspend pupils guilty of such acts for a period not to exceed 10 school days pending review by the school board, or a hearing officer appointed by it. Any such suspension shall be reported immediately to the School Board and to the parents or guardian of such pupil along with a full statement of the reasons for such suspension. The School Board or a hearing officer appointed by it shall review such action of the superintendent or principal. At such review the parents or guardian of the pupil may appear and discuss the suspension with the Board or its hearing officer. If a hearing officer is appointed by the Board he shall report to the Board a written summary of the evidence heard at the meeting. After its hearing or upon receipt of its written report of its hearing officer, the Board may take such action it finds appropriate."

This section of the statute has again been amended effective October 1, 1972 making the hearing mandatory only upon the request of the parents or guardian.

### 5. The School Board's Rules and Procedures on Expulsion Meet the Requirements of Due Process.

The act of expelling a student from a school district is an administrative act accomplished by an administrative

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2. The School Board has adopted rules for this type of hearing. (Appendix E p. A29.)

hearing. The Juvenile Court Act contemplates the consideration of a criminal act in Juvenile Court as opposed to the Criminal Court. That a matter before an Administrative Agency may also be a criminal act does not bar an Administrative Agency from acting on the matter separately, applying its own rules and sanctions. Certainly the standards of due process apply in administrative hearings, but to require a school board to conduct a juvenile court hearing is greatly beyond its means and abilities. It is ridiculous to argue every time a minor is involved in an administrative hearing, the Juvenile Court Act must control the proceedings.[3]

In the case of *Goldberg* v. *Kelly*, 397 U. S. 254; 90 S. Ct. 1011 (1970) this court set forth the basic procedural requirements for a fair administrative hearing. They are in summary:

1. The opportunity to be present and orally state a position;
2. The opportunity to confront and cross-examine witnesses;
3. The right to counsel;
4. A decision by an impartial decision maker resting on legal rules and evidence presented at the hearing.

The Statute (Appendix C p. A19), and the School Board's rules and procedures (Appendix D p. A22), more than meet these requirements:

1. The Statute provides for a hearing and a reasoned decision by the school board. (Appendix C. p. A19 para. (a).)

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3. A scholarly memorandum was filed by the Missouri District Court, en Banc, covering Student Discipline. It specifically treats this question under "The Nature of Student Discipline Compared to Criminal Law", *Memorandum on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institution of Higher Education.* 45 F. R. D. 133.

2. The School Board's rules and procedures provide for Student's presentation of evidence. (Appendix D p. A22 Rule 1.C.)
3. The right of cross-examination and general rules of evidence. (Appendix D p. A23 Rule 8.)
4. The right to have counsel. (Appendix D. p. A22 Rule 1.C.)

As can be seen from these rules and procedures this administrative hearing for expulsion more than meets the requirements of *Goldberg, supra.* The School has and continues to refine its rules and procedures as the courts further refine the basic standards and the rules of fair play dictate. (Appendix E p. A25.) There have been numerous decisions outlining the requirements of due process for school expulsion hearings. Some of the more relevant ones to this cause are *Sill* v. *Pennsylvania State University,* 462 F. 2d 463 (1972); *Dixon* v. *Alabama State Board of Ed.,* 294 F. 2d 150 (1961); *Whitfield* v. *J. R. Simpson,* 312 F. Supp. 889 (1970); *Buttny* v. *Smiley,* 281 F. Supp. 280 (1968); *Due* v. *Florida A. & M. University,* 233 F. Supp. 396 (1963).

### 6. The School Board Met the Proper Burden of Proof and It Was in Their Power to Decide Upon the Evidence.

It has been previously argued that the Juvenile Court proceedings are not applicable to administrative hearings. The test of proof beyond reasonable doubt was not used by the School Board; it is not the test to be used by Administrative Agencies. In reviewing administrative decisions the courts have described the burden of proof as "substantial weight". *Schwarze* v. *Board of Fire & Police Com'rs,* 46 Ill. App. 2d 64, 196 N. E. 2d 724 (1964).

In a particularly noteworthy case, the court said the guilt need not be proved beyond a reasonable doubt but

since the conduct in question also constituted a crime a preponderance of evidence was still the test but it should be clear and convincing. *Drezner* v. *Civil Service Commission,* 398 Ill. 219, 75 N. E. 2d 303 (1947).

As to conflicting testimony and the manifest weight of the evidence:

> "Evidence in cases is often conflicting and the mere fact that an administrative agency rules on evidence which is conflicting cannot be made grounds for reversal by the reviewing court. The review of the transcript must disclose a clear lack of substantial evidence." *Schwarze* v. *Board of Fire & Police Com'rs. ab. cit. supra.*

**7. The Statute Was Constitutionally Applied to the Student.**

The student raised twelve reasons as to how the expulsion statute was unconstitutionally applied to him. For the most part these alleged requirements are not required as a part of procedural or substantive due process as previously argued in this brief. Some, however, require comment for a full understanding of the School Board's background and position. (Taken in order from student's petition):

1. The question of double jeopardy was not raised in the District Court, however, it is common knowledge that administrative boards may suspend persons until a hearing for expulsion or termination takes place. The student is permitted to return to school pending the expulsion decision if it is delayed longer than the statutory seven day period.
2. Seven days elapsed from the date of the notice to the hearing date; no continuance was requested.

3. Free counsel is not required but the School Board now advises all students in their notification letter of the Legal Aid Society's availability to indigents.
4. By the Statute itself the School Board is required to make the decision and they may not delegate this final power.
5. The private hearing is for the sole protection of the minor, whose name and identity are never publicly divulged. The School Board believes it is in line with all juvenile procedures, is lawful and offers the best opportunity for future employment of the minor who adjusts.
6. A hearing in aggravation or mitigation is not required, but the Board now provides for such evidence to be presented on behalf of the student.
7. A transcript is not required but this is now so provided by rule; the transcript of the expulsion hearing shows the student was also provided a free transcript.
8. An appeal from the highest authority (the School Board) is not possible but a review pursuant to the "Administrative Review Act," is always possible. *Illinois Revised Statutes,* Chapter 110, Section 264-279 (1969). Judicial review is always available, Mandamus, Certiorari, Quo Warranto and Injunction.

It should be noted that some of the above provisions in the Board's rules were not officially in effect at the time of the expulsion in question, but all of them were in effect prior to the commencement of this lawsuit. They were not made because of the threat of any lawsuit but by reason of the Board's sincere desire to be as fair and reasonable as possible in light of the gravity of an expulsion and to keep their rules current.

**8. A Valid Class Action was Not Stated in the Complaint.**

In his Petition to this Court the Student states as issue number (1.) whether or not the District Court erred in ruling the Complaint failed to state a valid class action, however he fails to support or argue this issue. This Court is placed in the same position as the District Court, that is, acting in a vacuum for lack of sufficient arguments or allegations. The Complaint stated it was brought ". . . on behalf of himself (the student) and all other persons and students of School District No. 150, Peoria County, Illinois, similarly situated . . ." No other allegations were made in support of a class action, therefore the prerequisites required by Rule 23, Federal Rules of Civil Procedure, Title 28 U. S. Code, were not met leaving the court without basis for allowing a class action.

## CONCLUSION.

The Illinois Statute in question is constitutional and has been so held by the United States Court of Appeals for the Seventh Circuit. The Respondent School District has enacted, as it had a right and duty to do, reasonable and fair rules describing in detail prohibited acts of students' and penalties for their breach. These rules also assure complete procedural due process for students and guarantee a full and fair hearing which meets or exceeds all Federal guidelines.

The penalty imposed is extraordinarily lenient viewed in light of the facts and permitted the student's return to school far sooner than could possibly have been accomplished through court action had it been successful. In fact no private attorney, even with a client to whom expense meant little, could possibly have justified this prolonged litigation with such minimal possible client benefits.

The Respondent School District's decision to expel the student was supported by the manifest weight of the evidence presented and was approved by the United States Court of Appeals of the Seventh Circuit. The student lost on both prior appeals on every issue raised at any time during the course of this litigation. He should not here be permitted to cloud those issues by conjectural rhetoric involving possible other States and other jurisdictions where no issue or evidence thereof appears in this litigation.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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## APPENDIX A.

IN THE UNITED STATES DISTRICT COURT
Southern District of Illinois
Northern Division

DEWAYNE LINWOOD, a minor by ELEASE LINWOOD, his mother and next of friend, on behalf of himself and all other persons similarly situated,
*Plaintiff,*
*vs.*
THE BOARD OF EDUCATION OF THE CITY OF PEORIA, SCHOOL DISTRICT No. 150, Peoria County, Illinois,
*Defendant.*

No. P-3225

### DECISION AND ORDER.

This cause is before the court on defendant's motion for summary judgment. The question for decision is whether the pleadings and exhibits on file "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

Plaintiff's complaint was originally filed in the Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County, on December 18, 1970, Case No. 70 2 4147. The defendant removed the cause to this court, asserting that this court has original jurisdiction of the matter under 28 U. S. C. § 1343(3) because plaintiff's claim is actionable under 42 U. S. C. § 1983. No objection to removal has been

made by the plaintiff and it is apparent from the complaint that removal is proper as asserted.

This action was brought on plaintiff's behalf by his mother.[1] The plaintiff, a 15-year-old boy, was expelled by the defendant from its Manual High School on October 12, 1970 for the remainder of the school semester then in progress. The plaintiff seeks to have Ill. Rev. Stat. ch. 122, § 10-22.6, declared unconstitutional as violative of the 5th, 6th, and 14th Amendments to the Constitution of the United States and several provisions of the Illinois State Constitution of 1870. The plaintiff also seeks an injunction requiring defendant to reinstate him in school and to allow him to make up work missed due to his suspension and expulsion. A money judgment and other relief is also prayed.

The basic questions raised by the pleadings, herein, and the motion for summary judgment are whether Ill. Rev. Stat. ch. 122, § 10-22.6 (1969), is violative of the United States Constitution or the asserted provisions of the Illinois Constitution, either on its face or as applied by the defendant to expel the plaintiff.

The complaint and answer, along with accompanying exhibits, show the following summary of undisputed material facts. The minor plaintiff was enrolled as a student at Manual High School, in Peoria, for the fall semester of the 1970-71 school year. On September 10, 1970, he was suspended from the high school by the Dean of Students for 7 days without any hearing.

On September 24, 1970, a letter was sent by the defendant to the plaintiff's mother, by registered mail, and was received by her on that date. Among other things, the letter notified her that a hearing was to be held on Sep-

1. The action was also brought on behalf of others similarly situated, but this court decided, on February 23, 1971, that the complaint did not state any valid class action under Rule 23, Fed. R. Civ. P.

tember 29, 1970 to determine whether or not her son was to be expelled from the Peoria Public Schools. The notice also indicated the time and place of the hearing. More specifically, it indicated that the boy was charged by the administration with gross disobedience and misconduct under Section 10-22.6 of the Illinois School Code in that on September 10, 1970, he attacked and struck other students in the halls of Manual High School. It is also stated that her son could be represented by an attorney and evidence could be presented if desired.

On September 29, 1970, the hearing was held before a local attorney acting as the hearing officer, and a transcript was made by a certified court reporter. The plaintiff and the school administration each were represented by an attorney. The plaintiff, his mother and brother were present at the hearing and witnesses were presented on behalf of the plaintiff here as well as the school administration. Opportunity for cross-examination was afforded to each. The certified transcript of the hearing shows that one student testified that the plaintiff struck him without provocation and a teacher testified that he saw the plaintiff strike another student without apparent provocation. This testimony was contradicted by the plaintiff's own testimony and testimony of his mother concerning statements made by him to her.

On October 12, 1970, at a meeting of the defendant board, after review of the hearing transcript, by a 6 to 1 vote, the plaintiff was expelled for the balance of the semester then in progress. On October 13, 1970, a notice was sent to plaintiff's mother stating that her son had been expelled.

An elaborate procedure was in effect at the time of the incident on September 10, 1970, the hearing and the board meeting which was to be followed in considering a student for expulsion under the statute. This procedure provided for a proper notice and hearing. Also in effect was a list

of offenses which constituted disobedience and/or misconduct. Physical assault was so listed.

On the basis of the undisputed facts in the record, summarized above, it is clear that there was (1) adequate notice of the charges; (2) reasonable opportunity to prepare for and meet them; (3) an orderly hearing appropriate for the matter; and (4) a fair and impartial decision which was amply supported by the evidence received at the hearing. The specific acts of striking other students, which the evidence demonstrated, were clearly the grounds of the defendant's decision and were well within the terms of "gross disobedience or misconduct of Section 10-22.6, ch. 122, Ill. Rev. Stat. This court finds that the record shows no genuine issue as to any material fact and that the undisputed facts clearly show that the plaintiff was afforded adequate due process of law in regard to his expulsion. Thus, the subject statute is constitutional as applied to the plaintiff.

In addition to attacking the constitutionality of the statute as applied, the plaintiff also charges that the statute is unconstitutional and void on its face. Nearly every conceivable ground for so holding such a statute is asserted by the planitiff.

The general grounds asserted are that the terms "gross disobedience and misconduct" render the section void for vagueness, and that the statute does not afford minimal procedural due process protection. The issues raised by these assertions, however, have already been decided and amply treated in a recent decision of a three-judge district court in *Whitfield* v. *Simpson*, 312 F. Supp. 889 (E. D. Ill. 1970). This court agrees with the reasoning and analysis supporting that decision, and also holds that the statute is not void on its face.

On the vagueness issue, the plaintiff cites to the court the decision of the United States Court of Appeals for the Seventh Circuit in *Soglin* v. *Kauffman*, 418 F. 2d 163 (7th

Cir. 1969), and the dissenting opinion of the Honorable Walter J. Cummings, Circuit Judge, in *Whitfield*. It is here considered that this decision is not contrary to Judge Cummings' opinion in *Soglin* nor his dissenting opinion in *Whitfield*.

In *Soglin*, college students were dismissed from the University of Wisconsin for violating the stated standard of "misconduct." A United States district court held that the standard of "misconduct" alone may not serve as a foundation for expulsion or suspension of students for any significant time. On appeal, the district court was affirmed. The specific holding of the court was

> "that expulsion and prolonged suspension may not be imposed on students by a university simply on the basis of allegations of 'misconduct' *without reference to any preexisting rule which supplies an adequate guide.*" *Soglin* v. *Kauffman*, *supra* at 168. (Emphasis added.)

Also, in *Whitfield*, Judge Cummings made similar statements to the effect that had the school board adopted reasonably clear and precise rules of conduct giving content to the terms "gross disobedience or misconduct," the statute, in his view, might very well be sustained.

In the case at hand, the school board had adopted, at the time the incidents involved herein took place, a list of offenses indicating disobedience or misconduct which were specified to be gross enough to warrant disciplinary action. In this list was "physical assaults." This code of conduct, in effect during the pertinent period of time, may not meet the same rigorous standards as criminal statutes. It is clear, however, that school codes of conduct are not required to meet such standards. *Soglin* v. *Kauffman*, *supra* at 168. This court finds that the defendant had established adequate guides by the code of conduct and, therefore, the defendant had supplied adequate content to the terms "gross disobedience or misconduct."

Plaintiff's contention that the statute in question does not provide minimal procedural due process protection is clearly without foundation. For any substantial suspension or expulsion, the statute provides for notice and a hearing that are quite adequate.

Many of the plaintiff's due process contentions relate to rights of a defendant accused of a criminal offense. It is clear, however, what constitutes procedural due process in any situation depends upon the nature of the proceeding and the rights involved. *Madera* v. *Board of Education of City of New York*, 386 F. 2d 778 (2d Cir. 1967); cf. *United States* v. *Sturgis*, 342 F. 2d 328 (3rd Cir. 1965). It seems obvious to this court that at a hearing to determine whether a high school student is to be expelled, due process does not require that he have the right to have counsel appointed for him, to compel witnesses in his behalf, to have a unanimous decision by the school board, nor to require proof of the offense beyond a reasonable doubt. Such hearing is unquestionably a serious matter, but it is by no means the equivalent of a criminal proceeding as plaintiff seems to argue, and it does not carry with it all the due process requirements applicable to such proceedings.

As stated above, in addition to the federal constitutional claims asserted by the plaintiff, he also asserts state law claims based on certain provisions in the Illinois Constitution of 1870. The state constitutional provisions allegedly violated by the statute here, and by the defendant in expelling the plaintiff, are Sections 1, 2, and 19 of Article II, Section 22 of Article IV, and Section 1 of Article VIII. Under the doctrine of pendent jurisdiction, this court may pass on these claims. *United Mine Workers of America* v. *Gibbs*, 383 U. S. 715 (1966). In view of the policy behind pendent jurisdiction of judicial economy, convenience, and fairness to the litigants, this cause is an appropriate one for the court to do so.

The only substantial state claim presented by the plaintiff is the alleged violation of Article II, Section 2. This is the due process clause of the Illinois Constitution, which is expressed in identical terms as in the federal constitution. This court has already discussed and stated that the challenged statute on its face and as applied by the defendant does not violate the due process clause of the federal constitution, and for the same reasons holds that it does not violate the due process clause of the Illinois Constitution.

All the other constitutional claims, both federal and state, asserted by the plaintiff, have been carefully considered by the court. While perhaps novel and resourceful on the part of the advocate, they are found to be totally without merit under established law.

In conclusion, the record shows no genuine issue as to any material fact, and it shows no violation of either the United States Constitution or the Illinois Constitution. The court holds that the challenged statute does not violate procedural due process requirements, nor is it void for vagueness, and that the statute as applied adequately meets the requirements of due process in this field. Courts should not undertake to regulate the duly constituted authorities in charge of the operation of our school systems, except to the extent that it may be necessary to protect individual constitutional rights. Neither the federal nor the state constitutions require intervention in this case.

Accordingly, IT IS ORDERED that Defendant's Motion for Summary Judgment be and is hereby GRANTED, and IT IS FURTHER ORDERED that this cause be and it is hereby DISMISSED WITH prejudice.

/s/ ROBERT D. MORGAN,
Robert D. Morgan,
*United States District Judge.*

Entered: June 4, 1971.

## APPENDIX B.

IN THE UNITED STATES COURT OF APPEALS
for the Seventh Circuit

September Term, 1971—April Session, 1972

No. 71-1541

DEWAYNE LINWOOD, a minor by ELEASE LINWOOD, his mother and next friend, on behalf of himself and all other persons similarly situated,
*Plaintiff-Appellant,*

*vs.*

THE BOARD OF EDUCATION OF THE CITY OF PEORIA, SCHOOL DISTRICT No. 150, PEORIA COUNTY, ILLINOIS,
*Defendant-Appellee.*

Appeal from the United States District Court for the Southern District of Illinois, Northern Division.

No. P-3225

ROBERT A. MORGAN,
*Judge.*

ARGUED APRIL 28, 1972 — DECIDED JUNE 16, 1972

Before CASTLE, *Senior Circuit Judge,* and CUMMINGS and SPRECHER, *Circuit Judges.*

CASTLE, *Senior Circuit Judge.* The plaintiff-appellant, Dewayne Linwood, a fifteen year old high school student, by his mother and next friend, instituted this action[1]

1. The complaint was filed in the Circuit Court for the Tenth Judicial Circuit of Illinois on December 18, 1970. The cause was removed to the District Court by the defendant without objection from the plaintiff.

against the defendant Board of Education on behalf of himself "and all other persons and students of School District No. 150, Peoria County, Illinois, similarly situated". The complaint alleged, inter alia, that the appellant, a student enrolled at Peoria Manual High School which is operated by the defendant-appellee Board was suspended on September 10, 1970 for a period of 7 days pursuant to Ill. Rev. Stat. 1969, ch. 122, § 10.22.6, without first being granted a hearing, or opportunity to make any statement in his own behalf; that appellant was not permitted to make up any test or work which occurred during the suspension period; that following his return to school a hearing was held on September 29, 1970 and appellant was advised on October 13, 1970 that he was expelled until January 19, 1971 (the commencement of the next school semester); and that Section 10.22.6 of the Illinois School Code (Ill. Rev. Stat. 1969, ch. 122, § 10.22.6)[2] which purports to give Illinois school boards the power to provide for the suspension of and to expel students violates the due process and certain other provisions of the Illinois Constitution and the 5th, 6th and 14th Amendments to the United States Constitution. The complaint sought a declaratory judgment that § 10.22.6 is unconstitutional; mandatory injunctive relief to compel that appellant and other students suspended or expelled during the 1970-1971 school year be reinstated, be permitted to take all tests and courses missed, and receive credits accordingly; that records relating to the suspensions and expulsions be either destroyed or be impounded by the court; and that the appellant be awarded monetary damages.

The defendant-appellee filed an answer supported by attached exhibits which included the written notice given

2. Insofar as here pertinent, § 10.22.6 provided that the Board of Education shall have the power: (See Appendix C for printed statute.)

to appellant's mother of the hearing scheduled for September 29, 1970 to determine whether the appellant should be expelled and which advised her that appellant was charged with gross disobedience and misconduct for allegedly attacking and striking other students in the halls of the school on September 10, 1970; the defendant Board's definitions and rules pertaining to student discipline[3] and its procedures governing suspensions and expulsions;[4] the transcript of proceedings and evidence at the September 29, 1970 hearing (a copy of which had been furnished to appellant without cost pursuant to the Board's policy); and the record of the Board's action at its October 12, 1970 meeting expelling the appellant. The defendant moved for summary judgment on the pleadings. The District Court, after ruling that the plaintiff-appellant's action failed to qualify under Rule 23 of the Federal Rules of Civil Procedure as a valid class action, granted the defendant Board's motion for summary judgment and dismissed the cause. The plaintiff-appellant prosecuted this appeal.

Appellant seeks reversal of the judgment below on the grounds the District Court erred in its holdings that § 10.22.6 is constitutional, and was constitutionally applied in the instant matter; the Board's decision expelling appellant is supported by the record; and no genuine issue as to a material fact precluded the entry of a summary judgment.

With respect to the constitutional validity of § 10.22.6 the principal contentions of the appellant are that the

3. The Board's rules on student discipline provided that a physical assault constituted disobedience or misconduct gross enough to warrant disciplinary action which for major or repeated offenses might take the form of suspension with recommendation for expulsion. The authority to suspend as a disciplinary measure is delegated to the school principal.

4. The Board's rules governing the procedures for expulsion were as follows: (See Appendix D for Board's rules.)

section violates the due process of law requirements of the 14th Amendment to the United States Constitution and Article II, Section 2 of the Illinois Constitution by authorizing school boards to make disciplinary suspensions or expulsions of students for "gross disobedience or misconduct" and by not requiring that a suspension for 7 days or less be preceded by a formal hearing.[5]

The appellant in urging that the use of the language "gross disobedience or misconduct" § 10.22.6 has the effect of making the section so vague and indefinite in its meaning and application that it fails to meet the tests of due process refers to the decision of this Court in *Soglin* v. *Kauffman*, 7 Cir., 418 F. 2d 163. In that case

5. The appellant makes the additional contention that the provisions of § 10.22.6 which grant immunity from legal action to a school board member or school official for such suspension or expulsion violate the ban against "special" or "local" laws imposed by Article IV, Section 22 of the Illinois Constitution of 1870, and continued in Article IV, Section 13 of the Illinois Constitution of 1970 (effective July 1, 1971). But inasmuch as the statute is state-wide in its application and embraces what appears to be a rational classification we perceive no merit in this contention. And, more important here, neither a board member nor a school official is a party to this suit. Thus there is no actual controversy between adversely interested parties presented which would support a declaratory judgment embracing the issue the appellant so seeks to tender.

Likewise, in our opinion, neither the objective of providing an "efficient system of free schools, whereby all the children of the State may receive a good common school education" expressed in Article VIII, Section 1 of the Illinois Constitution of 1870, nor the enunciation contained in Article X, Section 1 of the Illinois Constitution of 1970 (effective July 1, 1971) that "[a] fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities" supports appellant's argument that suspension or expulsion is no longer a permissible measure which may be availed of by public school authorities because the student from the non-affluent family is thereby deprived of continuing his education during the period of suspension or expulsion in contravention of the declared constitutional goal of his educational development to the limit of his capacity. We see no basis for reading such a restriction on permissible disciplinary measures into the quoted language.

the state university students involved were charged with "misconduct" and were being threatened with suspension or expulsion as punishment therefor. The university argued that its inherent power to discipline its students could be exercised without the necessity of relying on preexisting specific rules of conduct. Judge Cummings, speaking for the Court, aptly observed (418 F. 2d at 167) that "[p]ower alone does not supply the standards needed to determine its application to types of behavior or specific instances of 'misconduct' ". The Court recognized that the sanctions of suspension or expulsion may be applied by school authorities for property proscribed misconduct, pointed out that school codes of conduct need not satisfy the same rigorous standards as criminal statutes, and carefully limited the scope of its holding, stating (418 F. 2d at 168):

> "We only hold that expulsion and prolonged suspension may not be imposed on students by a university simply on the basis of allegations of 'misconduct' without reference to any preexisting rule which supplies an adequate guide."

Again, in *Whitfield* v. *Simpson* (D. C. E. D. Ill.), 312 F. Supp. 889, Judge Cummings, although speaking in dissent and expressing the view that the term "gross disobedience or misconduct" used in § 10.22.6 was, of itself, insufficient to supply a standard for the expulsion of a high school student, went on to state (312 F. Supp. at 898):

> "Plaintiff's expulsion might have been sustainable had the School Board given content to 'gross disobedience or misconduct' through reasonably narrow rules or regulations. Chapter 122, Section 10-20.5, Illinois Revised Statutes, vested the Board with power to 'adopt and enforce' such rules. Construed as a standard for the School Board's exercise of that rulemaking authority, 'gross disobedience or misconduct' might well be constitutional. See Panama Refining Co. v. Ryan, 293

U. S. 388, 420-430, 55 S. Ct. 241, 79 L. Ed. 446; cf. Kent v. Dulles, 357 U. S. 116, 127, 129, 78 S. Ct. 1113, 2 L. Ed. 2d 1204."

Thus, as Judge Cummings indicated in *Whitfield,* the rationale of *Soglin* that inherent power of a state university to maintain student discipline affords a constitutionally acceptable basis for it to suspend or expel students for misconduct providing preexisting rules reasonably define and interdict the conduct which may be so penalized, by a parity of reasoning equally dictates that a legislative enactment authorizing local school boards to utilize suspension or expulsion as disciplinary measures for "gross disobedience or misconduct" be recognized as a constitutionally acceptable basis for the imposition of such sanctions for conduct reasonably defined and proscribed by a local school code governing student conduct. And such is the case here. The Board's code of student conduct defined physical assault as gross disobedience or misconduct warranting suspension or expulsion.

In our judgment § 10.22.6 was not intended to be a self-executing regulation of student conduct. It is but a grant of power to local school boards. It does not purport to define or proscribe specific acts or omissions which may be penalized by suspension or expulsion. But it does furnish the local school authority with a general guideline or standard—that student disobedience or misconduct must be "gross" to justify its being made a ground for suspension or expulsion. When it is considered in the context of the nature of the subject matter involved and the express "duty" imposed on local school boards by a companion section of the same enactment (Ill. Rev. Stat. 1969, ch. 122, § 10.20.5) "[t]o adopt and enforce all necessary rules for the management and government of the public schools of their district", this general standard, although insufficient in and of itself to operate as a rule to govern the actions of

students, is adequate to guide the local school board in defining the specific acts for which it proposes to apply the sanctions of suspension or expulsion. Legislative enactments are not to be construed in a vacuum but in the context in which they appear and in the light of their intended purpose, and if susceptible of two interpretations—one of which would invalidate the enactment—the other and valid interpretation must be adopted. We do so here, and hold that § 10.22.6 is not invalid as a vague proscription of student conduct, but is to be implemented by appropriate rules adopted by the local school board to reasonably define and interdict the acts or omissions which may be penalized by suspension or expulsion. However, we do not hold that a student would have standing to challenge § 10.22.6 if he has committed misconduct truly gross by any standard.

It is apparent from the provisions of § 10.22.6 no expulsion, nor suspension for a period in excess of 7 days, is to be made unless preceded by a hearing held pursuant to notice of the time, place and purpose of the hearing. But appellant contends that the statute is constitutionally deficient from the standpoint of substantive and procedural due process, and lack of equal protection of law, in not requiring similar safeguards where a suspension of 7 days or less is imposed. We are of the view that a suspension for so relatively a short period for reasonably proscribed conduct is a minor disciplinary penalty which the legislature may elect to treat differently from expulsion or prolonged suspension without violating a constitutional right of the student. *Cf. Williams* v. *Dade County School Board,* 5 Cir., 411 F. 2d 299. Certainly, the imposition of disciplinary measures such as after-school detention, restriction to the class-room during free periods, reprimand, or admonition does not *per se* involve matter rising to the dignity of constitutional magnitude. We conclude that insofar as the requirement of a hearing is concerned it was within the dis-

cretion of the law-makers to equate suspensions of 7 days or less with other minor disciplinary penalties although they did reserve the imposition of this particular sanction to school officials with supervisory status.[6]

Appellant's contention that § 10.22.6 is constitutionally infirm because of its failure to provide for an appeal from or judicial review of the Board's decision is not well taken. Although board action taken under § 10.22.6 is not brought within the purview of the Illinois Administrative Review Act (Ill. Rev. Stat. 1969, ch. 110, § 265) it is reviewable by common-law certiorari. See: I. L. P., Administrative Law and Procedure, § 42.

Appellant additionally urges that with respect to his expulsion until the January 1971 school term both the statute, and the Board's procedure in applying it to him, deprived him of rights he claims are essential to due process. In this connection we have already pointed out that § 10.22.6 requires that any expulsion be preceded by notice and hearing, and we have set forth (footnote 4, ante) the Board's rules governing the procedure to be followed in considering a student for expulsion. Appellant makes no complaint as to the adequacy of the notice given of the hearing nor does he contend that the Board did not follow its rules of procedure. On the record before us he could not successfully do so. In this connection the record discloses that on September 24, 1970, the appellant's mother received notice from the Board in the form of a letter sent by certified mail. The letter gave notice that a hearing would be held at 7:00 p.m.,

6. In his complaint the appellant alleged that "pursuant to such statute [§ 10.22.6] the plaintiff was suspended from Manual High School on September 10, by written notice signed by the Dean of Boys". On appeal he argues that this initial 7 day suspension, after which he returned to school, was invalid because it was not signed by the superintendent of the district or the principal of the high school. He neither raised nor argued this point below. We, therefore, deem it waived and will not consider it on this appeal.

September 29, 1970, in the board room of the Administration Building of the Peoria Public Schools, 3202 North Wisconsin Avenue, to determine whether or not the appellant was to be expelled from the Peoria Public Schools. The notice set forth the charges; advised that the hearing would be private in accordance with the Board's policy on expulsions, a copy of which was enclosed; advised that evidence could be presented in refutation of the charges; and that appellant could be represented by an attorney. On September 29, 1970, the hearing was held before a local attorney acting as the hearing officer, and a transcript of the proceeding was made by a court reporter and appellant furnished with a copy. The appellant was represented by counsel. The appellant, his mother, and his brother were present at the hearing. Witnesses were presented by both the appellant and the school administration. Opportunity for cross-examination was afforded. One student testified that the appellant struck him without provocation and a teacher testified that he saw appellant strike another student without apparent provocation. This testimony was contradicted by the appellant's own testimony and testimony of his mother with respect to what appellant told her about the incidents. On October 12, 1970, at a meeting of the Board, after review of the hearing transcript, by a 6 to 1 vote, the appellant was expelled for the balance of the semester then in progress, and notified accordingly.

The fundamental requisite of due process is the opportunity to be heard. *Grannis* v. *Ordean*, 234 U. S. 385, 394. The hearing must be at a meaningful time and in a meaningful manner. *Armstrong* v. *Manzo*, 380 U. S. 545, 552. Here the statute required a hearing preceded by notice of the time, the place, and the purpose. And, the Board's procedural rules, and the manner of their application to the appellant, were in our judgment constitutionally adequate. The Board's rules of procedure mandated, and

the appellant received, timely and adequate notice of the charges, with a reasonable opportunity to prepare for and meet them; an orderly hearing in keeping with the nature of the subject matter involved; the right to be represented by counsel, to call and examine witnesses, to cross-examine the opposing witnesses; and consideration of the evidence by an impartial tribunal with action based thereon. The type of administrative hearing here involved need not take the form of a judicial or quasi-judicial trial. Due process in the context here involved is not to be equated, as appellant urges, with that essential to a criminal trial or a juvenile court delinquency proceeding. Cf. *Madera* v. *Board of Education of City of New York*, 2 Cir., 386 F. 2d 778; *Dixon* v. *Alabama State Board of Education*, 5 Cir., 294 F. 2d 150. Thus, we reject appellant's argument that he was entitled to a public hearing; appointment of counsel at public expense; process to compel the attendance of witnesses; proof of the charges beyond a reasonable doubt; and a unanimous decision. Nor, as he additionally urges, was he entitled to a hearing under procedures which include rules providing that the student is to be furnished within a reasonable time prior to the hearing with a list of the names and addresses of the witnesses who are to testify, and information with respect to the testimony each will give; providing that the hearing is to be conducted by a panel of impartial persons other than the board members, each of whom will be present during all of the testimony; and requiring that the decision is to be made in the form of a written opinion incorporating findings of fact upon which it is based.

The appellant's remaining contention[7] is that an issue as to whether the evidence adduced at the hearing supports

7. In view of the conclusion we reach herein we do not find it necessary to consider appellant's contention that the court erred in ruling that the action fails to qualify as a valid class action other than to note that Rule 23(a) (4) of the Federal Rules of Civil Procedure requires that a representative party will fairly

the Board's action in expelling him presented a genuine issue as to a material fact which precluded the District Court's entry of a summary judgment. The complaint does assail the constitutional adequacy of the hearing and decisional procedures because of failure to provide that to warrant expulsion the charge be proved beyond a reasonable doubt. But this presented a legal issue with respect to the standard of proof to be required—not a factual issue. Moreover, examination of the transcript demonstrates that the Board's conclusion was not contrary to the manifest weight of the evidence. And insofar as sufficiency of the evidence to sustain administrative action is concerned that is the recognized Illinois test. Cf. *Drezner* v. *Civil Service Commission*, 398 Ill. 219, 75 N. E. 2d 303; *Schwarze* v. *Board of Fire & Police Com'rs.*, 46 Ill. App. 2d 64, 196 N. E. 2d 724. And it presents no federal constitutional problem.

The judgment order of the District Court is affirmed.

AFFIRMED.

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and adequately protect the interest of the class, and that while the complaint purports to include all students of the district similarly situated, the record discloses that appellant seeks to represent only students from certain classes of families, such as those receiving Social Security and poor or economically underprivileged families, *i.e.*, families receiving State Public Assistance, local Township Assistance (General Assistance), or whose income falls below Federal standards defining poverty.

## APPENDIX C.

### ILLINOIS REVISED STATUTES, CHAPT. 122, SECT. 10-22.6 (1969).

10-22.6 § 10-22.6. **Suspension or expulsion of pupils.** (a) To expel pupils guilty of gross disobedience or misconduct, and no action shall lie against them for such expulsion. Expulsion shall take place only after the parents have been requested to appear at a meeting of the board, or with a hearing officer appointed by it, to discuss their child's behavior. Such request shall be made by registered or certified mail and shall state the time, place and purpose of the meeting. The board, or a hearing officer appointed by it, at such meeting shall state the reasons for dismissal and the date on which the expulsion is to become effective. If a hearing officer is appointed by the board he shall report to the board a written summary of the evidence heard at the meeting and the board may take such action thereon as it finds appropriate.

(b) To suspend or by regulation to authorize the superintendent of the district or the principal of any school to suspend pupils guilty of gross disobedience or misconduct for a period not to exceed 7 days or until the next regular meeting of the board, whichever first occurs, and no actions shall lie against them for such suspension.

Amended by P. A. 76-1073, § 1, eff. Aug. 28, 1969.

*Amendment by P. A. 76-1074, § 1 see § 10-22.6, post.*

*Amendment by P. A. 76-1670, § 1, see § 10-22.6, post.*

Final legislative action, 1969 General Assembly:

P.A. 76-1073—April 11, 1969.
P.A. 76-1074—April 11, 1969.
P.A. 76-1670—June 19, 1969.

As to the effect of more than one amendment of a section at the same session of the General Assembly, see People ex rel. Hines v.

**10-22.6 § 10-22.6. Suspension or expulsion of pupils.** (a) To expel pupils guilty of gross disobedience or misconduct, and no action shall lie against them for such expulsion. Expulsion shall take place only after the parents have been requested to appear at a meeting of the board to discuss their child's behavior. Such request shall be made by registered or certified mail and shall state the time, place and purpose of the meeting. The board at such meeting shall state the reasons for dismissal and the date on which the expulsion is to become effective.

(b) To suspend or by regulation to authorize the superintendent of the district or the principal of any school to suspend pupils guilty of gross disobedience or misconduct for a period not to exceed 7 days or until the next regular meeting of the board, whichever first occurs, and no action shall lie against them for such suspension.

(c) To suspend or by regulation to authorize the superintendent of the district or the principal of any school to suspend pupils guilty of gross disobedience or misconduct on the school bus from riding the school bus and no action shall lie against them for such suspension. Such suspension shall continue until it has been reviewed by the school board, or a hearing officer appointed by it. At such review the parents or guardian of the child may appear and discuss such suspension with the board or its hearing officer. If a hearing officer is appointed by the board he shall report to the board a written summary of the evidence heard at the meeting. The board may take such action thereon as

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Baltimore & O. S. W. R. Co., 366 Ill. 318, 8 N. E. 2d 655; S. Buchsbaum & Co. v. Gordon, 389 Ill. 493, 59 N. E. 2d 832; People ex rel. Brenza v. Fleetwood, 413 Ill. 513, 109 N. E. 2d 741; People ex rel. Dickey v. Southern Railway Company, 17 Ill. 2d 550, 162 N. E. 2d 417; Apex Motor Fuel Company v. Barrett, 20 Ill. 2d 395, 169 N. E. 2d 769.

it finds appropriate upon the board's hearing or the written report of its hearing officer.

Amended by P. A. 76-1074, § 1, eff. Aug. 28, 1969.

*Amendment by P. A. 76-1073, § 1,*
*see § 10-22.6, ante.*

*Amendment by P. A. 76-1670, § 1,*
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(b) To suspend or by regulation to authorize the superintendent of the district or the principal of any school to suspend pupils guilty of gross disobedience or misconduct for a period not to exceed 7 days or until the next regular meeting of the board, whichever first occurs, and no action shall lie against them for such suspension.

(c) The Department of Mental Health shall be invited to send a representative to consult with the board at such meeting whenever there is evidence that mental illness may be the cause for expulsion or suspension.

Amended by P. A. 76-1670, § 1, eff. Oct. 3, 1969.

*Amendment by P. A. 76-1073, § 1,*
*see § 10-22.6, ante.*

*Amendment by P. A. 76-1074, § 1*
*see § 10-22.6, ante.*

## APPENDIX D.

### SCHOOL BOARD POLICY.

Students—Board Policy.

Article 5.

### EXPULSION OF PUPILS.

Students may be expelled from the Peoria Public Schools in accordance with the provisions of Section 10-22.6 of the Illinois School Code. The following procedures shall be followed in considering a student for expulsion:

1. After investigating a recommendation by a school principal that a student be expelled, the Superintendent shall, if he concurs with the recommendation, send a registered letter to the parents of the student notifying them:

   A. That the student will be called before a hearing officer for the purpose of hearing the evidence of the alleged misconduct for which the expulsion is recommended.

   B. That the hearing will be held in private session at a specified time and place.

   C. That the student may be represented at the hearing by his parents and/or an attorney, if the student desires, and that he may present such evidence to refute the charges as he desires.

2. Expulsion hearings shall be conducted by an attorney chosen from a pool of three attorneys selected by the President of the Peoria Bar Association and approved by the Board of Education.

3. The expulsion hearings shall be held in the Board Room of the Administration Building.
4. The Superintendent shall notify board members of the date and time of an expulsion hearing. Members of the Board of Education may be present for the hearings and may question witnesses.
5. A court reporter shall be employed to take down all the testimony. This record of testimony shall be typed and copies of it given to members of the Board of Education.
6. The final determination of the Board of Education as to whether a student shall be expelled shall be arrived at after discussing the evidence in executive session. Final action by the Board shall be taken in public session.
7. Only the following persons may be present at the hearing: the student and his parents or guardians, board members, witnesses, the school principal, the administrative assistant and/or the dean, the Superintendent and Associate and Assistant Superintendents, and attorneys for the student and for the school district.
8. General rules of evidence shall be adhered to. However, the hearing should be more informal than a full adversary hearing, but officials of the school district or its attorney and the student, his attorney, and/or his parents have the right to cross-examine witnesses.
9. There can be a short opening statement to acquaint the hearing officer of the basic proposition for both sides and to inform him of the witnesses who will be called.
10. There will be no closing arguments by Counsel.
11. The student's disciplinary and scholastic record not related to the incident leading to the expulsion charge, is not admissible at the hearing as having any effect or bearing on proof or disproof of the charge as made. The record will be made available

to the Board, however, if it has reached a conclusion of guilt on the part of the student, for use in its deliberations as to the severity of the penalty to be imposed.

12. The penalty imposed by the Board may be expulsion for any given period of time. This could be until the beginning of the next semester or the next school year, or longer.

Reference: Illinois School Code Section 10-22.6.

Revised: January 19, 1970.

# APPENDIX E.

## SCHOOL BOARD POLICY.

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1. After investigating a recommendation by a school principal that a student be expelled, the superintendent shall, if he concurs with the recommendation, send a registered or certified letter to the parents of the student requesting them, along with the pupil to appear at a hearing before the board, or before a hearing officer appointed by it, to hear charges as to the pupil's behavior for which expulsion is sought. Such a request shall advise them that this will be a private hearing, shall state the time, place, purpose of the hearing and a description of the violation, together with the date and place of occurrence for which expulsion of the pupil is sought; in addition, the pupil may have an attorney at such hearing and may cross-examine witnesses, offer evidence, call witnesses and present defenses to the charges.

   In the notice the superintendent shall also advise the parents that if they cannot afford a lawyer they should contact the Greater Peoria Legal Aid Society which provides free legal services for those who cannot afford them otherwise. The board shall use

its subpoena power to compel the attendance at the hearing of witnesses requested by the student or his legal representative.

2. Expulsion hearings shall be conducted by an attorney chosen from a pool of three attorneys selected by the President of the Peoria Bar Association and approved by the Board of Education.
3. The expulsion hearings shall be held in Room I of the Administration Building. These hearings shall be held not less than seven (7) nor more than fourteen (14) days after notice is received by the parents unless continuation is requested on behalf of the pupil.
4. The superintendent shall notify board members of the date and time of an expulsion hearing. Members of the Board of Education may be present for the hearing and may question witnesses.
5. A court reporter shall be employed to take down all the testimony. This record of testimony shall be typed and copies of it given to members of the Board of Education and the student or his legal representative.
6. The final determination of the Board of Education as to whether a student shall be expelled shall be arrived at after discussing the evidence in executive session. Final action by the board shall be taken in public session.
7. Only the following persons may be present at the hearing: The student and his parents or guardians, board members, the school principal, or his designated representative, the superintendent and/or associate superintendent, and attorneys for the student and for the school district. Witnesses, other than the student shall only be present for their testimony. A student witness may request that his parents be present during his testimony and if he makes such a request it shall be granted.
8. General rules of evidence shall be adhered to. However, the hearing should be more informal than

a full adversary hearing, but Board Members of the school district or its attorney and the student, his attorney or his parents have the right to cross-examine witnesses. If an objection to a question propounded to a witness is sustained by the hearing officer the examining party may make a specific concise offer of what he expects to prove by the answer of the witness. The hearing officer may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made and the ruling thereon.

9. There can be a short opening statement to acquaint the hearing officer of the basic proposition for both sides and to inform him of the witnesses who will be called.
10. There will be no closing arguments by counsel.
11. The student's disciplinary and scholastic record not related to the incident leading to the expulsion charge, or not relevent to the explanation of the incident, is not admissable at the hearing as having any effect or bearing on proof or disproof of the charge as made. It shall be made available to the student or his representative at the time the date of the hearing is set. The record will be made available to the board, however, if it has reached a conclusion of guilt on the part of the student, for use in its deliberations as to the severity of the penalty to be imposed. A written statement concerning the student's disciplinary and scholastic record may be submitted on behalf of the student to be considered along with and in the same manner by the Board as the official disciplinary and scholastic record.
12. Offenses which may be considered as constituting gross disobedience and/or gross misconduct shall be one or more of the following:
    A. Physical assault.
    B. Violent acts which are disruptive of the operation of the school or school activities.
    C. Stealing or defacing of school or personal property.

D. Gross disrespect, gross insubordination or gross verbal abuse of school personnel and/or fellow students. Gross verbal abuse may include among other things racial or religious slurs.

E. Use or possession of alcoholic beverages or being under the influence thereof.

F. Use, possession, or being under the influence of dangerous drugs, chemicals, or marijuana.

G. Carrying or possession of weapons.

H. Gambling.

I. Excessive unexcused absence or excessive unexcused tardiness from school, class, or other officially designated school assignment and after counseling and notice to the pupil and his or her parents or legal guardian.

All such acts shall have been committed:

J. On school property or adjacent thereto; or

K. While attending a school-related activity; or

L. Upon or as to school personnel while in the discharge of official school business; or

M. While on a school bus or public transportation authorized by the school.

13. The finding of the board at such expulsion hearing may be:

A. Not guilty with immediate reinstatement. If so reinstated the pupil must be permitted to make up all work missed by reason of such expulsion proceedings or suspension connected therewith;

B. Expulsion from all or part of the schools or school activities of such district for a definite period.

C. The sentence of expulsion as provided in B hereof may be suspended at the board's option so long as the student maintains exemplary behavior.

14. Limit on the number of suspensions before an expulsion hearing is recommended:

A. While it is expected that the administration will suspend most students guilty of gross disobedience or misconduct rather than recommend them for an expulsion hearing, it is recognized that for some students an unlimited number of suspensions may not be sufficient deterrent to further disobedience or misconduct. Thus, there is a need to set a reasonable limit on the number of times a student will be suspended before he is recommended for an expulsion hearing.

B. Upon the third suspension of a student in a school year, the principal shall notify in writing the student and his or her parent(s) or guardian(s) that if the student is again guilty of gross disobedience or gross misconduct, he will be suspended and will be recommended for an expulsion hearing.

Revised: January 24, 1972.

## Article 5.

## SUSPENSION OF STUDENTS.

1. The superintendent of the district or the principal of any school is authorized to suspend students guilty of gross disobedience or misconduct for a period not to exceed 10 school days.
2. Each suspension shall be reviewed by a hearing officer appointed by the Board of Education.
   The following procedures shall be followed in dealing with suspensions:

   A. Upon suspension of any student, a statement of the reasons for the suspension and the rules and regulations violated by the student's conduct shall on the same day be conveyed to the student, the student's parent or guardian, the secretary of the Board of Education, the superintendent or a person designated by him and the Board-appointed hearing officer.

B. The hearing officer upon receipt of a suspension notice shall schedule the review hearing. Notification of the date, time and place for the review of the suspension and a statement of the procedure to be followed at the review shall be sent to the principal and the parents or guardians of the student by first class mail.

C. The following rules will be followed in the review hearings:

1. All review proceedings shall be held at the home school of the student involved and shall occur during school hours.
2. The school administration shall proceed first and the student may then respond.
3. The hearings shall be informal and the rules of evidence shall not apply to review proceedings.
4. At such review the parents or guardian of the student and the student may appear and discuss the suspension with the hearing officer.
5. Testimony given by any person testifying will be limited to five minutes. The hearing officer may extend this time.
6. Either party may record the proceedings at his own expense.
7. All review hearings will be held in private sessions.

D. The hearing officer shall prepare a brief written summary of the evidence heard at the review and shall send this written summary. to the superintendent or a person designated by him.

E. The superintendent shall submit to the Board of Education for its consideration in executive session, a report of all suspensions and summaries of evidence heard at the review of suspensions.

F. If the Board of Education disallows a suspension the parents or guardians of the student whose suspension has been disallowed shall be notified by mail of the Board's decision.

G. If the Board of Education disallows a suspension, the student's record shall be expunged of all notations or remarks regarding the matter, the student's absence shall be excused and all educational opportunities missed by the student shall, if possible, be afforded him including the making up of any test.

H. The findings of the Board shall be final.

Adopted: December 6, 1971.

# APPENDIX F.

## SCHOOL ADMINISTRATION POLICY.

### Article 5.

### STUDENT DISCIPLINE.

1. Offenses that constitute disobedience and/or misconduct.

Following is a list of offenses that generally constitute disobedience and/or misconduct gross enough to warrant some type of disciplinary action. With each listed offense is the regulatory statement relative to the problem.

*Offense:* Physical and verbal assaults.

*Regulation:* Physical assault or severe verbal intimidation are not permitted.

*Offense:* Acts disruptive and coercive to the operation of the school, the individual classroom or other study or school activities.

*Regulation:* No student or group may impede another's freedom to properly utilize school facilities and programs or in any way impede educational or school sponsored, supervised or sanctioned activities.

*Offense:* Stealing or defacing of school or personal property.

*Regulation:* No person may take or destroy personal or public property.

*Offense:* Disrespect, insubordination and verbal abuse of school personnel.

*Regulation:* Profanity, vulgarity, obscene gestures, and defiance of duly constituted authority are not permitted.

***Offense:*** **Use of or possession of alcoholic beverages on school property or during school activities.**

***Regulation:*** **The consumption of alcoholic beverages is illegal for persons under age 21. Being under the influence of alcohol, consuming alcohol, or bringing alcohol onto school grounds or into school activities is not permitted.**

***Offense:*** **Use of or possession of dangerous drugs or chemicals.**

***Regulation:*** **The use of drugs without proper prescription is illegal and is a health hazard. Students may not appear at school under the influence of harmful drugs. The school will protect, to the limit of its ability, students from harmful drugs and chemicals and from those who sell or dispense harmful drugs or chemicals.**

***Offense:*** **Carrying or possessing weapons on school property.**

***Regulation:*** **Illegal weapons are not permitted on school grounds.**

***Offense:*** **Truancy, class cutting, or leaving the building without permission.**

***Regulation:*** **Attendance at school is required by State Law. Except for illness or excused absence, attendance is legally compulsory if enrolled in public school. (Section 26-1, Illinois State School Code.)**

***Offense:*** **Refusal to identify self.**

***Regulation:*** **In conformance with Section 24-26 of the Illinois State School Code, persons must identify self and purpose in a school building. Persons not complying with the law will not be permitted to remain in the building.**

***Offense:*** **Smoking.**

***Regulation:*** **Smoking except in established areas is not permitted on school grounds.**

*Offense:* Gambling.

*Regulation:* State law prohibits games played for money. No gambling is permitted on school grounds.

*Offense:* Chronic tardiness.

*Regulation:* Repeated offenses of tardiness will not be permitted to continue.

2. Disciplinary Action.

In the event the above listed offenses are committed, disciplinary action ranging from reprimand to suspension with recommendation for expulsion may be initiated by the principal and his staff. Specific actions that may be taken are as follows:

A. *Summary action*—This measure includes admonition, reprimand, detention, restricted study or corporal punishment.

B. *Referral to special personnel*—This measure would bring the student into contact with a counselor, psychologist, social worker, dean, administrative assistant or personnel from a specific community agency.

C. *Suspension*—This measure would be used for major or repeated offenses.

D. *Suspension with recommendation for expulsion*—This measure would be used in dealing with severe and repetitious acts that are in the judgment of school authorities so extreme that the continued presence of the student would be disruptive or dangerous. In dealing with problems for which suspension is a disciplinary action indicated the school administration may at any time take a *lesser summary action such as reprimand, detention, or restricted study, based on the severity or frequency of the problem.* A student who infrequently proves disruptive in the classroom may receive a lesser punishment than the student who has been referred frequently for the same offense.

In this way it is possible to allow for administrative discretion without altering the basic principle of uniform and impartial disciplinary action.

3. Corporal Punishment

Corporal punishment may be administered to a student as a last resort to effect proper conduct. The use of corporal punishment is to be kept at a minimum. When corporal punishment is administered, the following rules and procedures are to be observed carefully.

A. Corporal punishment is to be administered by the principal or those designated by him. If corporal punishment is administered by the principal, the administrative assistant, or teacher, another member of the certificated staff must be present as a witness.

B. Corporal punishment may be administered only after the nature of the offense is fully explained to the student.

C. The punishment should be administered with a paddle or an open hand and to the buttocks only.

D. Corporal punishment is not to be administered in the presence of other students, nor as a mass punishment procedure.

E. The punishment should be reasonable, never so administered as to leave permanent ill effects. Such punishment should not be inflicted with malice or in the heat of anger.

F. School personnel who administer corporal punishment should be prepared to justify such punishment as reasonable and just.

G. A written report of any act of corporal punishment will be kept on file in the principal's office.

4. Suspension Guideline

The responsibility for suspending students is delegated to the principal. (Illinois School Code Section 10-22.6.) Suspension should seldom be necessary for the maximum

period. A short suspension is likely to be as effective and less detrimental to the student's academic progress as a maximum suspension. The parent or legal guardian must be notified immediately of the suspension. Suspended students may not leave the building until parents or guardians have been notified of the suspension unless regular dismissal time has passed. A written report of the suspension must be kept on file in the principal's office and a copy sent to the associate superintendent's office.

5. Follow-up Subsequent to Suspension or Expulsion

It is up to the family and the student to see that the student is back in school within the time limits of the suspension or expulsion. However, the school has some responsibility in this process also. In order to fulfill this responsibility, school officials will follow these procedures:

A. If a student fails to return following suspension or expulsion:
   (1) Contact parents.
   (2) If necessary, send visiting counselor to the home.

B. Follow the progress of the student when he returns by:
   (1) Conferring with the principal and/or dean and parents.
   (2) Initiating a conference with special personnel appropriate to the case.
   (3) Initiating a conference with the student's teacher or teachers.
   (4) Maintaining communication with any involved outside agencies and the student's home.
   (5) Maintaining accurate records of the student's progress.

6. Dress and Appearance

School dress codes reflect a growing feeling that the responsibility for dress and general appearance rest with

parents and that careful regulation of student dress by school authorities is no longer necessary or even desirable. Thus, within broad limits developed by students and teachers at the individual schools and relating only to cleanliness, neatness, and the avoidance of clothing which is distracting or indecent, the dress and appearance at school is considered a matter of individual taste and family discretion.

Approved: December 29, 1969